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U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION:
THE 700 MHZ AUCTION”**

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Good morning Chairman Dingell, Chairman Markey, Ranking Members Barton and Stearns and Members of the Committee and thank you for holding this hearing.

Auction 73 brought us both good news and bad, but on the most important score—providing for the public safety—the news is still out and the really hard work is just beginning. We are still nowhere near improving the sad state of communications infrastructure available to America’s heroic first responders. And remember this: public safety was a primary, and in some minds the hands-down, most important reason, that we reclaimed TV channels 52 through 69 in the first place. So there is no more important mission for the FCC in 2008 and beyond than finishing this job and doing it *right*.

Even after the bumpy auction ride of the past year, I still favor trying to make a public-private partnership work. I’ve never said it was the ideal way to go. In fact, as some of you may recall, I have long believed that a federally-funded, interoperable wireless network—dedicated exclusively to public safety use—would have been the right solution. If the previous Commission, in those anxious days following 9/11, had stepped forward for such a commitment and dedicated itself to working with the Congress, we might have actually made this dream a reality. But that was then and this is now and different realities prevail.

So last summer, I accepted the novel idea of a public-private spectrum partnership because it probably represents the last, best chance we have to build a network that will

work for public safety. A viable partnership would combine the technical sophistication of a commercial network with the demanding coverage and reliability that public safety must have in order to provide the nation's first responders, at long last, with access to a national, interoperable broadband network. The most important part of this decision, in retrospect, is that for the first time the FCC recognized that we can no longer just assign public safety licenses to states and localities, full stop, end of FCC involvement.

Responding to regional and national disasters and coping with the threat of terror require much more than every jurisdiction just doing its own thing. Report after report has documented that such an approach has left too many licensees without the ability to achieve interoperability and without the funds to build out even local networks. Put more bluntly, we have left them without the tools they need to protect us and to protect themselves. Seven years after 9/11, this is a profoundly unacceptable result.

As we considered the details of the public-private model, my number one concern was that the network *actually work for public safety*. In terms of ubiquity, robustness, redundancy and many other qualities, the public safety network is a different animal than the purely commercial model. If we cannot ensure these attributes, we shouldn't even be proceeding down this road. As I have said before, I would rather have no network built—and let public safety go back to the drawing board—than tie up first responders' spectrum in a network primarily or disproportionately dedicated to serving purely commercial interests. We simply cannot let this precious opportunity to serve public safety be derailed by those who may prefer to enrich private interests at the expense of the public well-being. Let me be more blunt: we need to know up-front who among potential bidders in a new auction is dedicated to making this model work because there

are those who have the power to derail the whole effort, and we're not going to get another chance after the next outing.

At the same time, I also recognized that this network had to provide the commercial partner with a reasonable rate of return and an expectation of long-term profitability—or else the whole arrangement would collapse, leaving public safety without a network. Clarity about this is still lacking. Finally, and just as importantly, I believed the partnership required an honest broker between public safety and the commercial interest. And I devoted much of my effort last year to make that honest broker the FCC. I pushed hard, at every turn, to give the FCC oversight authority over network negotiations as well as the final say in approving, modifying and enforcing any agreement that the parties eventually reached. I knew that this would not be an easy role, of course; but given the stakes, it was an essential one. And I say again today: if this effort is going to really work, we *all* need to understand how involved and proactive the Commission must be. I believe we made substantial progress in carving out that role before the auction. But then we did so prospectively. This time the FCC needs to assume that more active role up-front in the process.

So as we embark on this critically important work, I'd like to identify five principles that I believe can lead us to a better outcome this time around:

First, we need to resolve as many technical details as possible about the network before we begin the auction. Last time we were operating on a short time-frame with a drop-dead date for conducting the auction staring us in the face. Many details were left to negotiation between the parties after the auction closed. Our rules specified, as you know, that the Commission would thoroughly review whatever the

parties agreed upon to ensure it was viable, efficacious and squarely in the public interest. But now—although time is precious and the urgency still high—we can do it smarter. Our agency must roll up its sleeves this spring and summer, bring the parties together, and work with them to make sure the expertise is available, the untold minutia of how to build and operate a nationwide wireless network is mastered, and everyone knows where this is going before the bidding opens. To me, this means that at least 90% of the network sharing agreement must be worked out in advance of the auction. If we put enough blood, sweat and toil into it now, we can yet avoid the tears of a failed effort.

Second, we need to clarify the roles of each of the partners—public safety and the commercial licensee—again before we hold the auction. This means specifying the precise duties and responsibilities of the public safety licensee and how it will fund itself in the period before the network is built, as well as on a long-term basis. Of particular importance, we must ensure that this is, at its heart, a non-profit operation. But that should not preclude the public safety licensee from hiring experts, including those who charge market rates for their services. Indeed, I think it is essential that public safety get the nation’s best experts on its staff as soon as possible—people who know how to build and operate cellular networks, who understand clearly how much it costs to do so, and who can give independent, unbiased advice on what kinds of equipment and specifications will serve public safety’s needs. Drawing the line between that kind of legitimate and necessary budgeting and allowing someone to profit unduly by advising public safety is one of our larger challenges in the months ahead.

One avenue for resolving these issues may be for the public safety representative to receive some modest funding from Congress or from one of the federal agencies that

currently funds interoperability projects—it would not have to be a large amount, just enough to support planning and some operational expenses until the effort becomes self-sustaining.

Third, the FCC needs to make sure that it has, in-building or via contract, the expertise it needs to contribute network, technical and operational knowledge to this effort and to play its honest broker role. We need people who understand how to build cellular networks and how much it costs to do so. For example, as we decide the geographic coverage requirements for the new network, we need to know what the cost difference is for building out to 90 percent versus 99 or 99.3 percent of the nation's population. We need to understand the costs and benefits, in sparsely-populated areas especially, of supplementing terrestrial build-out with satellite technology. There are hundreds of highly technical questions, I recognize, but we cannot write rules that strike the right balance if we are not fluent in these details.

So my message is that we need the experts. If we don't have enough experts today, we need to contract for them or to impanel a technical advisory group. If we can't get our hands on this kind of advice, then the FCC has no business even attempting to write rules for this auction.

Fourth, the FCC needs to perform, or otherwise obtain, a careful economic analysis—the same kind of analysis that a large carrier would perform before building a multi-billion dollar network or an investor would perform before loaning money to a new venture. After all, this auction is unlike other auctions we hold here at the FCC. Ordinarily, there is no question that spectrum will sell. To be sure, the conditions we impose can affect total revenue, but there will be takers at some price. But

here we are offering the chance to participate in a public-private partnership that has substantial costs as well as benefits. If we put forth rules that create too much uncertainty, or don't allow a reasonable expectation of profit, then we will find that no entity is willing to bid. As all of us in this room are well aware, this is not a purely academic concern—it's what happened last time. So we need to do better this time.

Fifth, when the FCC has done the hard work of formulating a set of network and operational specifications, we need to put them out for public comment. We can't afford to learn too late that one or another provision would unnecessarily exclude an otherwise willing bidder. And we can't afford to learn that any of our network specifications won't work for public safety or that we have left ambiguity in our rules that could cause harmful uncertainty.

All this is a tall order, I realize. And there are those who will say to us, "Better just to make a few tweaks in what you did last time and get on with the next auction." But, for me, the time for small tweaks has passed. Sure, we can change the reserve price (which I opposed in the first place), and we can even tweak the default penalty provision (though there needs to be *some* incentive for the auction winner to negotiate in good faith). But I don't believe that will give us the data and the understanding we need to achieve better results in the months ahead. We have a new situation now, and a new opportunity to do this right.

Each of my colleagues wants to deliver for public safety. I commend them, and I commend Chairman Martin for the thoughtful and receptive approach he has brought to this matter. I look forward to working with them, with all the parties, and with this

Committee to finally build America's brave first responders the network they deserve and to provide our citizens with the public safety networks they expect.

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Let me turn very briefly to the commercial side of the recently-completed 700 MHz auction. Here the news is decidedly mixed. On the positive side, a *lot* of money, far exceeding most expectations, was raised—and this was smack in the middle of some tough economic times. Also on the positive side, we now have enforceable open access requirements on the 22 MHz C-Block and a commitment by the Commission to resolve complaints within six months. As I have stated before, history makes clear that open networks are good for consumers and for businesses. Without openness requirements, we would never have the fax machine, the answering machine, or the explosion of dial-up services like AOL that introduced most Americans to the Internet.

But in important respects, as I warned when we launched our rules, we end up with the same old, same old. The nation's two largest wireless carriers—who are also the nation's two leading wireline voice and DSL providers—won roughly 85% of the licenses, as measured by value. Participation by rural telephone companies was disappointing; participation by women- and minority-owned businesses was appalling. These trends towards consolidation in the wireless marketplace should worry all of us. Combined with the additional cross-ownership of wireless and wireline assets—which raises serious concerns that the wireless data market might develop in ways that are not good for American consumers—I find them deeply disturbing. To me, these facts underscore the damage that the Commission's decision to eliminate spectrum caps has wrought. I think our friends to the North have the better idea—Canada will auction 105

MHz of AWS spectrum next month—with 40% reserved exclusively for new entrants! I wish we had followed their model in our own auction.

The auction results also deepen my disappointment that the Commission did not impose a wholesale requirement on the C-Block. It is now clear that that a wholesale requirement would have had minimal impact on overall auction revenue, yet would have brought a new entrant to the wireless marketplace. This new entrant would have introduced welcome new competition. Even more importantly, unlike existing carriers, it would have been legally obligated to provide spectrum to small entrepreneurs at wholesale rates. Imagine what a change that would be—if any inventor with a great new technology, or any entrepreneur who identifies an underserved market, could simply buy spectrum capacity from a nationwide carrier at wholesale rates and offer its product directly to consumers. This would also have been a tremendous step forward for women- and minority-owned businesses eager to get into the wireless market but without the staggering capital resources necessary to build a new network from scratch. What a huge force for innovation and openness in the wireless market this could have been—and I am very sorry that a majority of the Commission rejected the suggestion of high-tech innovators, public interest groups, Commissioner Adelstein and me to travel down that road.

Thank you for the opportunity to testify today and I look forward to your comments, guidance and questions.